

A. G. Contract No. KR93 1935TRN
ECS File: JPA 94-08
JPA No.: 93-108
Project: G1050 35C
Section: Reconstruct portions of
Pima & Fifth Streets ESP

66526

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF PHOENIX

THIS AGREEMENT is entered into 22 FEBRUARY, 1994,
pursuant to Arizona Revised Statutes, Sections 11-951 through
11-954, as amended, between the STATE OF ARIZONA, acting by and
through its DEPARTMENT OF TRANSPORTATION (the "State") and the
CITY OF PHOENIX, (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-108 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 41-1513 and 28-1895 et seq to enter into this agreement and has by ordinance, a copy of which is attached hereto and made a part hereof, authorized the undersigned to execute this agreement on behalf of the City.

3. The City has requested Economic Strength Project (ESP) funds in the amount of \$92,292.00; the Arizona Department of Commerce and the Economic Development Commission have recommended the approval of such funds for the City, and the Transportation Board has approved the funding, for the construction of improvements to portions of Pima and Fifth Streets to provide improved access to local businesses, and aid in the retention and development of local business, hereinafter referred to as the Project.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. <u>18415</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>02/22/94</u>
<u>Richard Mahoney</u> Secretary of State
By <u>Vicky V. Greenwood</u>

II. SCOPE

1. The City will:

a. Insure the additional commitment of twenty one and three tenths percent (21.3%) of the total estimated Project cost, or \$25,000.00, whichever is more, from the City or other sources (not including ESP funds) to the Project and related improvements. Upon completion, accept the Project on behalf of the City and provide maintenance.

b. Invoice the State for ESP funds (Arizona Department of Transportation, ATTN: Director, Transportation Planning Division, 206 S. 17th Avenue, Room 300 B, Phoenix, AZ 85007), in the amount of \$92,292.00.

c. Provide the State a copy of the executed Project contract(s). Substantially draw down and expend the ESP funds within six (6) months after the effective date of this agreement. Provide the State written reports of all ESP fund expenditures, supported by invoices, receipts or other suitable documentation, and a final accounting report no later than thirty (30) days after ESP funds are fully expended. Reimburse the State any funds received under this agreement which are expended and subsequently disallowed by the State.

d. Provide the State (Arizona Department of Commerce, ATTN: Assistant Director, 3800 N. Central Avenue, Suite 1500, Phoenix, AZ 85004) with quarterly Project status reports, and one year after completion of the Project, a written Economic Impact Report outlining the impact of the Project, to include jobs created, jobs retained and related data.

2. The State will:

a. Within thirty (30) days after receipt and approval of the contract(s) and invoice, advance the City ESP funds in the amount of \$92,292.00.

III. MISCELLANEOUS PROVISIONS

1. The only interest of the Department of Transportation in the Project is to convey economic strength pass through funds for the use and benefit of the City by reason of state law under which funds for the Project are authorized to be expended.

2. The City agrees to indemnify and save harmless the State, or any of it's departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or non-performance by the City of any of the provisions of this agreement.

3. The total amount of ESP funds expended under this agreement shall not exceed seventy eight and seven tenths percent (78.7%) of the total Project cost. Should the Project not be completed, be partially completed, or be completed at a lower cost than the advanced amount, or for any other reason should any of these ESP funds not be expended, a proportionate amount of the funds provided under this agreement shall be reimbursed to the State.

4. This agreement shall remain in force and effect until completion of said Project, reimbursement and subsequent reports; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party.

5. This agreement shall become effective upon filing with the Secretary of State.

6. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

7. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

8. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

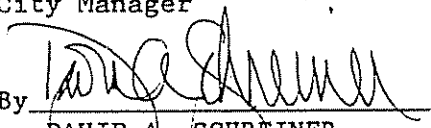
Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Room 222E Mail Drop 616E
Phoenix, AZ 85007

City of Phoenix
Community and Economic Development Department
1 North First Street
Phoenix, AZ 85004


10. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF PHOENIX, A Municipal
Corporation, Frank Fairbanks,
City Manager

By 
DAVID A. SCHREINER
Acting Director, Community
and Economic Development

STATE OF ARIZONA
Department of Transportation

By 
HARRY A. REED
Director, Transportation
Planning Division


ATTEST:

By 
VICKY MIEL
City Clerk

RESOLUTION

BE IT RESOLVED on this 3rd day of August 1993, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Transportation Planning Division, to enter into an agreement with the City of Phoenix for the purpose of defining responsibilities for the pass through of Economic Strength Project funds for the City to construct improvements to portions of Pima and Fifth Streets.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted for approval and execution by the Director, Transportation Planning Division.



for LARRY S. BONINE
Director

ORDINANCE NO. S 2 1 6 3 2

AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF ARIZONA DEPARTMENT OF COMMERCE ECONOMIC STRENGTH PROJECT GRANT FUNDS TO REIMBURSE THE HEIL COMPANY FOR THE CONSTRUCTION OF STREET IMPROVEMENTS AT 5TH STREET AND PIMA STREET; AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION; AUTHORIZING A DEVELOPMENT AGREEMENT WITH THE HEIL COMPANY; AND AUTHORIZING THE CITY CONTROLLER TO DISBURSE THE GRANT FUNDS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1: That the City Manager or his designee be, and they are hereby, authorized to accept Arizona Department of Commerce Economic Strength Project ("ESP") grant funds in the amount of \$92,292 to be used solely to reimburse The Heil Company ("Heil") for the construction of street improvements ("Project") in the public right-of-way in the vicinity of 5th Street and Pima Street in Phoenix.

SECTION 2: That the City Manager or his designee be, and they are hereby, authorized to enter into an Intergovernmental Agreement ("IGA") with the Arizona Department of Transportation ("ADOT"), which shall include the following provisions:

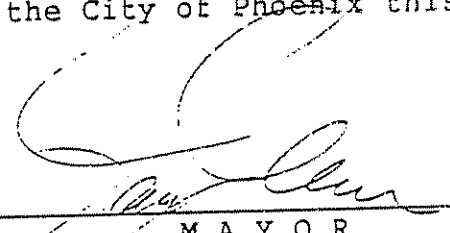
- (a) The City shall require that 21.3% of the Project costs or \$25,000, whichever is greater, is obtained from a source other than ESP funds;
- (b) The City shall provide ADOT with a copy of the executed Project contract(s), along with an invoice in the amount of \$92,292;
- (c) Within 30 days after receipt and approval of the contract(s) and invoice, ADOT shall pay the ESP funds to the City;
- (d) The City shall forward to ADOT copies of all documentation evidencing the expenditure of ESP funds, along with any written reports requested by ADOT; and
- (e) Such other terms and conditions as may be deemed necessary or appropriate.

SECTION 3: That the City Manager or his designee be, and he is hereby, authorized to enter into a Development Agreement with Heil, which shall include the following provisions:

- (a) Heil shall construct the Project as a public works project in accordance with all applicable state statutes and City plans, specifications and ordinances;
- (b) Heil shall provide the City with a copy of the construction contract(s) along with documentation of all other Project expenditures and such reports as the City may request relating to the Project;
- (c) Upon completion of the Project to the City's satisfaction, the City shall reimburse Heil, with ESP grant funds, for 78.7% of the documented Project costs, up to a maximum of \$92,292; and
- (d) Such other terms and conditions as deemed necessary and appropriate.

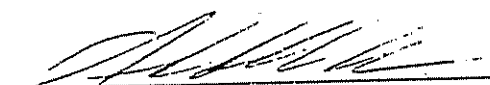
SECTION 4: That the City Controller or his designee
be, and they are hereby, authorized to disburse funds in
accordance with the provisions of this Ordinance.

PASSED by the Council of the City of Phoenix this
6 day of October, 1993.



MAYOR

ATTEST:



ACTING
City Clerk

APPROVED AS TO FORM:



ACTING
City Attorney

REVIEWED BY:



ASSISTANT
City Manager

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APPROVAL OF THE PHOENIX CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the CITY OF PHOENIX and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

DATED this 24th day of February, 1993.

Michael D. Hare
ALM City Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

MAIN PHONE: 542-5025

TELESCOPIER: 542-4085

GRANT WOODS
ATTORNEY GENERAL


INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A. G. Contract No. KR93-1935-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 15th day of February, 1994.

GRANT WOODS
Attorney General


JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:lsc
8365G